IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2.08.2006

CORAM

THE HONOURABLE MR.A.P.SHAH, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE D.MURUGESAN

W.A.Nos.443 to 445 and 485 to 487 of 2006
And W.A.M.P.Nos. 1002 and 1003 of 2006

R. Shanmugam
rep by his power agent
K.V. Jayaraman .. Appellant
in WA 443/2006

Ammasi Kutty .. Appellant
in WA 444/2006

1. M. Duraisamy
2. M. Mani
.. Appellants
in WA 445/2006

1. M. Manimekalai
2. S. Maruthachalam
Appellants 1 & 2 rep by their
Power agent K.V. Jayaraman .. Appellants
in WA 485/2006

1. Perichiappa Gounder
2. Kumarasamy
3. Maruchamy Gounder
4. A. Natarajan
5. Ramasamy Gounder
6. Marathal
7. Ganesh
8. Radhamani
.. Appellants
in WA 486/2006

1. Sellappa Gounder
2. G. Karunanidhi .. Appellants
in WA 487/2006

-Vs-

1. The State of Tamil Nadu
rep. by its Secretary to Government
Housing and Urban Development Department
Fort St. George, Chennai 600 009

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2. The Tamil Nadu Housing Board
represented by its Chairman/ Managing Director
No.331, Anna Salai, Nandanam
Chennai-35.

3. The Special Tahsildar Land Acquisition
Housing Scheme Unit-II
Coimbatore-18.

.. Respondents
in all W.As.

Memorandum of Grounds of Writ Appeals filed under Clause 15 of the Letters Patent, against the order of the learned Judge dated 23.12.2005 passed in W.P.No.37583of 2004,20237 of 2005,24968 of 2005, 37578of 2004,37580 of 2004 and 20176 of 2005 respectively. presented under Article 226 of the Constitution of India to issue writ of Certiorarified Mandamus calling for the records relating to the proceedings of the first respondent in Letter No.

9230/LA III-2/2002-15, dated 24.8.2004

4413/LA III-2/2005-3 dated 3.5.2005

15869/LA III-2/2002-4 dated 16.7.2004

8443/LA III-2/2004-2 dated 24.8.2004

37215/LA III-2/2001-13 dated 24.8.2004

4577/LA III-2/2005-3 dated 3.5.2005

respectively quash the same and consequently direct the first respondent to re convey the land to the Petitioner.

i. an extent of 0.34.5 hectares in S.F.No.838/2B situated in Kalapatti Village Coimbatore North Taluk, Coimbatore District.

ii. an extent of 1.15.0 and 0.12.0 acres respectively in S.F.No.820/2 and 824/3, situated in Kalapatti village, Coimbatore North Taluk, Coimbatore District.

iii. an extent of 0.54.5 in Survey No.945/3, situated at Kalapatti village, Coimbatore North Taluk, Coimbatore District.

iv. an extent of 0.13.0 hecrates ibn S.F.No.839/2A,

0.08.0 hectares in S.F.No.849/1A

0.12.0 hectares in S.F.No.849/2A

0.74.0 hectares in S.F.No.838/3 and

0.98.0 hectares in Survey No. 838/4 situated in Kalapatti Village, Coimbatore North Taluk, Coimbatore District.

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V. An extent of 0.74.0 in S.F.No.838/5 an extent of 0.21.0, 0.30.0, 0.19.5, 0.32.0, 0.18.0, 0.25.5. in S.F.No.849/1B, 2B,1C, 2C, 1D, 2D, respectively an extent of 0.01.0, 0.09.5, 0.22.0, 0.13.5, 0.15.0 in S.F.No.850/2C, 2D, 2E, 2F, 2G, respectively the lands in S.F.No.850/3 and an extent of 0.76.0 hectares of land in S.No.839/2C situated in Kalapatti Village, Coimbatore North Taluk, Coimbatore District and

VI. an extent of 0.84 acres 0.84 acres and 0.84 acres respectively in S.F.Nos.841/1, 841/1A and 841/1B, situated in Kalapatti Village, Coimbatore North Taluk, Coimbatore District respectively.

For Appellants :: Mr.K.Chandru
in all Appeals Senior counsel for
Mr.R.N.Amarnath

For 2nd and 3rd
Respondents :: Mr.R. Vidhuthalai
in all appeals Advocate General
For Mr.D.Veerasekaran TNHB

For respondents 1 .. Mr.J.Rajakalifullah
in all appeals Govt. Pleader

JUDGMENT

D.MURUGESAN, J.

These Writ Appeals raise the following points for our consideration.

1. Whether the Government have right to repossess the land acquired and transferred to the Tamil Nadu Housing Board that remains unutilized by the Board for a long number of years in terms of Section 16-B of the Land Acquisition Act 1894?

2. Whether the erstwhile land owners have vested right to seek for re-conveyance of unutilised land under Section 48-B on expressing their willingness to repay the amount that was paid to them under the Act for acquisition of land, inclusive of the amount referred to in Sub-section (1-A) and (2) of Section 23, if any, paid under this Act, and the Government is obligated to accept the request as such?

2. The following are the few facts that led to the controversy before us.

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The Tamil Nadu Housing Board (hereinafter referred shortly as "TNHB") forwarded a proposal to the Government for acquiring an

extent of 1997.02 acres of patta land for the Kalapatti Neighbourhood Scheme, Coimbatore. Notifications under Section 4(1) of the Land Acquisition Act (hereinafter referred to as "the Central Act), were issued on various dates during the year 1991 in respect of 821.33 acres of land in different survey numbers. An extent of 1175.69 acres of land was not notified even as on today. After enquiry under section 5-A, Section 6 declarations were made and awards were also passed in respect of 662.96 acres of land. An extent of 105.61 acres of land was taken over by the Government and handed over to "Board" and an extent of 21.47 acres of land alone was utilized for Housing Scheme. As large extent of lands were unutilized by the Housing Board, the owners of the land approached the Government under Section 48-B of the Land Acquisition Act (hereinafter referred to as "The State Amendment Act") seeking for re-conveyance of the unutilized lands. Their common claim was that in the event, the lands acquired for construction of houses by the Board remain unutilized for quite long number of years, the Government shall have the power to take back the lands from the Board and re-convey the unutilised lands to the land owners. By the orders impugned in the Writ Petitions, their claim was rejected on the ground that awards were passed, compensation amounts were paid and the lands were still required for Housing Scheme. On a challenge to the orders of the Government more or less on the same ground, the learned Judge while dismissing the Writ Petitions, has held that there cannot be two vesting of the same land, one in the Government and another in Housing Board. The learned Judge has further held that in view of the specific provisions of Section 17-A, the claim for forfeiture of the land by the Government under Section 16-B of the Act is unsustainable.

3. We have heard the respective learned senior counsel on either side. Before embarking upon the issue, it is necessary to trace the history of TNHB Act and the object for which the Housing Board was constituted. For improvement of the City of Madras, the Board of Trustees was constituted under the Madras City Improvement Trust Act, 1950 and the Board of Trustees was in-charge of Housing, Land Development and general improvement of the City. Every project proposed by the Board must get sanction of the Government before it is executed. Basically, the powers of the Board are limited and only to formulate the project for land Development, Housing and General improvement within the City and there was no independent power entrusted with the Board for execution of other Housing Projects of the Government not framed under the said Act. For the purpose of implementing the Scheme by the Board of Trustees, the Government in exercise of power of Eminent Domain, acquired the land under the provisions of "The Central Act". Section 16 of the Central Act empowers the Collector to take possession of the land in respect of which award is passed under Section 11 of the Act. Once possession is taken, the land shall vest in the Government free from all encumbrances. Under Section 17 of the Central Act, in case of urgency and if the appropriate Government so directs, the collector, though no award is made, may on the expiration of 15 days from the publication of the notice mentioned under Section 9, take possession of the land needed for public purpose and such land shall thereupon vest absolutely in the Government free from all encumbrances.

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4. In order to enable the Government to hand over possession of the lands so acquired to the Board, Section 17-A of the Madras City Improvement Act was introduced by the State Amendment Act to the Central Act which reads as follows:

> 17-A Transfer of land to Board:- In every case referred to in Section 16 or 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Board; and the land shall thereupon vest in the Board, subject to the liability of the Board to pay any further costs which may be incurred on account of its acquisition"

5. By the said provision, lands handed over to the Board shall vest in the Board. By the enactment of TNHB Act and by virtue of the specific provisions of Section 162 of the Act, the Madras City Improvement Trust Act, 1950, was repealed and therefore, the provision of Section 17-A of the Madras City Improvement Trust Act also stood deleted after TNHB Act was enacted.

6. As both the Central and State Government felt that the minimum need of Housing Programme should not be restricted only for the Cities and must also be extended to other areas as well, constitution of a statutory authority having State wide jurisdiction for execution of Housing Project was seriously considered. On the above backdrop, the Tamil Nadu State Housing Board Act, 1961 (Act 17/1961)(hereinafter referred to "the TNHB Act), was enacted with the object basically to provide for execution of housing and improvement schemes and for establishment of State Housing Board. Section 12 to 15 of Chapter III relates to transfer of assets and liabilities of the City Improvement Trust to the Board. The Board is constituted under Section 4 of the Act. Chapter VII of the Act relates to Housing or Improvement Scheme. Section 35 of the Act relate to the power of the Board to undertake Housing or Improvement Scheme and incur expenditure. Under Sub-section (1) of Section 35, the Board may undertake works for the training and execution of such housing or improvement schemes. Further, under Sub-Section (2) of Section 35, the Government may transfer to the Board the execution of any housing or improvement scheme not provided under the Act and on such transfer, the Board shall thereupon undertake the execution of such schemes, as if, it has been provided for by the Act. Under Sub-Section (3) of Section 35, the Board may on such terms and conditions as may be agreed upon, take over for execution of any housing or improvement scheme undertaken by a local authority and the Board shall execute such scheme as if it has been provided for

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7. In addition to the above, under Section 36, when the Government considers it expedient or necessary for the purpose of clearance or improvement of any slum area, transfer any land in such area belonging to or vested in them or acquired under the provisions of the Madras Slum Improvement Acquisition of Land Act, 1954 and they may do so on such terms and conditions as they may think fit to impose and direct the Board to undertake the clearance or improvement of that area and to frame and execute such housing or improvement scheme, as if, it has been provided for by the Act. A housing or improvement scheme may be framed by the Board on its own motion or at the instance of the Government or a local authority under Section 37 of the Act. A housing or improvement Scheme framed by the Board under Section 37 of the Act may provide the following:

a) the acquisition by purchase, exchange, or otherwise of any property necessary for or affected by the execution of the scheme;
b) the laying or relaying out of any land comprised in the scheme;
c) the closure or demolition of dwellings or portions of dwellings unfit for human habitation;
d) the sale, lease or exchange of any property comprised in the scheme;
e) the construction and alteration of road, streets back lanes, bridges, culverts and causeways;
f) the draining, water supply and lighting of the streets included in the scheme;
g) the provision of open parks, playing fields and open spaces for the benefit of any area comprised in the scheme or any adjoining area and the enlargement of existing parks, playing field, open spaces and approaches;
h) the provision of schools, parks, swimming pools, restaurants, shops markets, fuel depots, laundries hair dressing saloons and other amenities in the scheme and
i) any other matter for, which, in the opinion of the Government, it is expedient to make provision with a view to provide house accommodation and to the improvement of any area comprised in the scheme, or of any adjoining area or the general efficiency of the scheme.

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8. The power of the Board for framing a Housing Accommodation Scheme is contemplated under Section 41 of the Act. Under Section 44 of the Act, whenever the Board is of the opinion that it is expedient to control and provide for the future expansion or development of a city, town or village, it may frame an expansion scheme. The expansion scheme so framed may be in respect of an area which has wholly within or wholly outside the limits of the city, town or village. Under Section 47 of the Act, whenever the Board is of the opinion that it is expedient to provide building sites in any area, the Board may frame a land development scheme. Such scheme shall specify the proposed lay out of the area to be developed and the purposes for which the particular portions

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thereof are to be utilized. The Board may provide for roads, streets, open spaces drainage, water supply and street lighting and other amenities for the scheme area.

9. In addition to the above, in terms of Section 66, the Board has further duties, such as, to plan and coordinate all housing activities in the State and to ensure expeditious and efficient implementation of housing or improvement schemes in the State and to provide technical advice and scrutinize all projects under housing and improvement scheme sponsored by Central or State Government.

10. A conjoint reading of the above provisions and the scheme of "the TNHB Act" shows that the primary duty of the Board is to frame a housing or improvement scheme in an area either within the City or town or village and execute the Scheme. Framing of a housing or improvement scheme and its execution is not only restricted to the scheme framed by the Board but also extended to the execution of work under a scheme either by the State or the local authority. The Board has no power to directly acquire the land for execution of the schemes, as it is the sovereign power of the State Government or Central Government as the case may be, in their realm of Eminent Domain, to acquire the land under the provisions of the Central Act. When once a scheme is framed by the Board, a proposal is forwarded to the State Government as to the requirement of the lands in a specified extent and on acceptance of the proposal by the Government, the lands are acquired by the State and are handed over to the Board. Inasmuch as the Madras City Improvement Trust Act, 1950 was repealed under Section 162 of the Tamil Nadu Housing Board Act, a provision was made to bring the Housing and Improvement Scheme as one of the public purposes and for applicability of the provisions of the Land Acquisition Act, a provision is made under Section 70 of the TNHB Act which reads as under:

> Any land or any interest therein required by the Board for any of the purposes of this Act may be Acquired under the provisions of the Land Acquisition Act,1894(Central Act of 1894)

11. Much reliance was placed on the provisions of Section 72 of the Act to sustain the plea that the land handed over to TNHB shall vest with the Board and it has absolute power to dispose of the land. The said Section reads as under:

> Power to dispose of land:
>
> (1) The Board may retain or may lease, sell exchange or otherwise dispose of any land vested in or acquired by it under this Act,
>
> (2) whenever the Board decides to lease or sell any land acquired by it under this Act from any person, it
>
> a) shall give notice advertisement in one of the leading local newspaper in the State and
>
> b) shall offer to the said person, or his heirs

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executors or administrators, a prior right to take on lease or to purchase such land for an amount or at a rate to be fixed by the Board, if the Board considers that such an offer can be made without reference detriment to the carrying out of the purposes of this Act.
c) If any case two or more persons claim to have the prior right referred to in clause (b) of Sub-section(2) preference shall be given to the person who agrees to pay the highest amount or rate for the land, not being less than the amount or rate fixed by the Board under that clause.

12. An incidental question therefore arises as to whether the land handed over to TNHB shall absolutely vest in TNHB, and on such vesting, the Government would be disentitled from taking back the possession of the unutilised land from the Board. The Central Act was enacted with the object to empower the Government to acquire the land only for public purpose and for determining the amount of compensation to be made for such acquisition. Planning for development, improvement and housing by the Board is also a public purpose. At the request of the Board, the State Government acquires the land by issuance of 4(1) Notification and after the award proceedings are over under Section 11 and possession is taken by the Collector, the land shall absolutely vest in the Government free from all encumbrances under Section 16 and only after such vesting, the lands are handed over to the Board as contemplated under Section 70 of the "Housing Board Act".

13. Before we dwell upon the purport and meaning of the word “vest” employed in Section 16 of the Central Act, it would be relevant to refer the use of the word ”vest” in certain other enactments. Section 61 of the Tamil Nadu District Municipalities Act contemplates vesting of public streets and appurtenances in the Municipal Council. In terms of that Section, all public streets in municipality, with the pavements, stones and other materials thereof, and all works, materials and other things provided for such streets, all sewers, drains, drainage works, tunnels and culverts shall vest in Council. Section 203 of the Madras City Municipal Corporation Act contemplates a similar provision of vesting public streets and appurtenances in Corporation. In fact other City Municipal Corporation Acts viz., Tiruchi, Madurai, Coimbatore and Salem have similar provisions for vesting public streets and appurtenances in their respective Corporations. Section 126 of the Tamil Nadu Panchayats Act,1994 contemplates a similar provision of vesting of public roads in Panchayat Union Councils.

14. The word “vest” has no fixed connotation, meaning in all cases that the property is owned by the persons or the authority in whom it vests. It may vest in title, or in possession, or it may vest in a limited sense, as indicated in the context in which it is used in a particular statute. It has variable import depending upon the use in a given statute and the word ”vest” used in different

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statutes, should be construed in the context of the provision of particular statute. Insofar as the word "vest" used in the law relating to local bodies like Corporation, Municipalities, Panchayats, it should be construed to mean conferring the power on the Corporation or the council as the case may be, only for the purpose of executing any improvement scheme which it has undertaken for maintenance and in order to maintain such public streets and appurtenances and not with a view to clothing it with complete title. In fact, when the provisions of the City Municipal Corporation Acts, District Municipalities Act and Town Panchayat Act speak of the word "vesting" of the streets, appurtenances in Corporation or Municipality as the case may be, it does not necessarily mean that ownership of the land has passed on to any of them. Section 56 of the Provincial Insolvency Act (5 of 1920) empowers the Court at the time of the making of the order of adjudication or thereafter to appoint a receiver for the property of the insolvent and to further provide that "such property shall thereupon vest in such receiver". The word "vest" employed therein is only for the purpose of the receiver to administer the estate of insolvent for payment of the debts after realizing, and the property of the insolvent vests in the receiver not for all purposes but only for the purpose of the Insolvency Act and the receiver has no interest of his own in the property. Referring to the provisions of Section 134 of the Lunacy Act,1890 in the case of In re Brown, it has been laid down by Lindley, L.J., that the word "vested" in that section included the right to obtain and deal with, without being actual owner of, the lunatic's personal estate.

15. With the above understanding of the word "vesting", let us now consider the word "vest" used in Section 16 of the Tamil Nadu Amendment Act.

> Power to take possession: When the Collector has made an award under Section 11, he may take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances"

The word "vest" used in Section 16 must include vesting of land in Government, not only in regard to title but also possession. It is well accepted principle of interpretation that if the plain language of the provision is clear and unambiguous, it would be only proper for the Courts to interpret and give plain grammatical meaning to such provision. In our opinion, the word "vest" used in Section 16 means and includes not only conferring mere right to possess the land acquired by the Government but also confer title on it. This is more so in view of the specific provisions of Section 16 of the Central Act, which provides that once possession of the land is taken by the Collector, the same shall absolutely vest in the Government free from all encumbrances.

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16. Coming to the word "vest" employed in Section 72 of Housing Board Act, again the said word must be construed in the context it is used. The object of the Act is only to enable the Board to frame a Housing or Improvement Scheme and execute such scheme. In the above context, the word "vesting" may relate to title or possession or some limited purpose of disposing of the same as contemplated under Section 72. As the Board has also the power to sell or dispose of the plots/flats as the case may be, the word "vesting" employed in Section 72 shall be construed to mean and include only the purpose of discharging its functions under the scheme. Such power of vesting cannot be equated to the power of vesting of the land in Government under Section 16 of the Central Act, where the lands acquired shall vest absolutely in Government free from all encumbrances.

17. This leads us to the further question as to the exercise of the power under Section 16-B by the Government to forfeit the land vis-a-vis the power of the TNHB to exercise the power to sell, mortgage etc., under Section 72 of the TNHB Act. In this context, it would be relevant to refer to the circumstances under which the provision of Section 16-B was introduced and the object behind it. Attention of the Government was drawn to the fact that the lands acquired by Government on behalf of several requisitioning bodies and handed over to them are transferred to others without prior permission of the Government. With a view to avoid the requisitioning bodies from transferring the acquired lands or any part thereof by sales, mortgage, gift etc., without prior permission of the Government, it became necessary for the Government to make a provision in the Central Act. The attention of the Government was also drawn to the fact that in certain cases the requisitioning bodies do not use the land acquired for them and the land is not put to use for the purpose for which it was originally acquired and the lands are kept idle for years together without utilising the same. In order to prohibit such events, the Government decided to insert a new provision viz., Section 16-B in the Central Act so as to provide that such land may be forfeited as penalty and on such forfeiture the land shall vest in the Government in Revenue Department. Section 16-B of the Tamil Nadu Amendment Act, 1996 (Act XVI of 1997) reads as under:

> 16-B Land to be forfeited in certain cases:
> Where the Government are satisfied that the land Acquired under this Act for any public purpose as referred to in sub-section (1) of Section 4 is not used for the purpose for which it was acquired, they may, by an order, forfeit the land as penalty and the land shall vest in the Government in Revenue Department free from all encumbrances.

18. Insofar as the lands acquired for public purpose for being utilised by the State Government, there is no difficulty in holding that in the event, such lands are not utilized for the purpose for which it was acquired, the Government may utilize the same for other public purpose. In the event the Government decides not to utilize the land for any other public purpose, it may, in exercise of powers under Section 48-B, re-convey the land to the

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erstwhile owners or may sell the land in public auction. Can it be said that the same principle would apply to TNHB as well for disposal of unutilised land by itself in exercise of power under Section 72 of the TNHB Act. In our opinion, TNHB has no such power.

19. Whether Section 16-B could be invoked for forfeiting the land as penalty, when the land was acquired and transferred to the Board for execution of the housing scheme or improvement scheme by the Board and such land is not utilized by the Board, more particularly, in view of Section 72 of the TNHB Act? As per Section 70, the land required by the Board for implementation of the scheme shall be acquired under the Central Act. Once the lands are acquired and transferred to the Housing Board, such lands shall vest in Housing Board in order to develop, to form layout, to construct houses or to make plots and to dispose of such plots or houses under Section 72 under the Scheme. A plain reading of Section 72 shows that the Housing Board is empowered to retain or lease, sell exchange or otherwise to dispose of the land vested in or acquired by it under the Act. In the event the lands are unutilized and are kept vacant, such lands cannot be dealt with by Housing Board in exercise of its power under Section 72 as such disposal will be outside the scope of the scheme. The power of the Board to dispose of the land under section 72 must be read in the context of the power of the Board to frame a housing and improvement scheme and such disposal must be as per the scheme and not otherwise.

20. It must be kept in mind that the Housing Board was constituted only for framing and implementing Housing and Improvement Schemes. Incidentally, it is also conferred with the power to dispose such land or houses to eligible buyers at the affordable market price. The legislature never intended to confer a power on the Housing Board to frame schemes and to make profit out of such schemes.

21. Section 17-A of the Tamil Nadu Amendment Act which was later repealed, contemplates payment of cost of acquisition by the Board constituted under City Improvement Trust Act. However, there is no such provision for payment of cost of acquisition by Housing Board to the Government as the entire cost of acquisition is borne by the Government. The provisions of Section 16-B must also be considered in this context. The lands are acquired under the Central Act only on the proposal of Housing Board. On acquisition, the land vest in Government under Section 16 of the Act and thereafter it is transferred to Housing Board only for the limited purpose of implementation of the Scheme. In the event, the State Government is satisfied that the land acquired and transferred to the Housing Board is not utilized for housing or improvement scheme for the purpose for which it was acquired, in exercise of the provisions of Section 16-B, it shall forfeit the land as penalty and thereafter the land shall vest with the Government in Revenue Department free from all encumbrances.

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22. Section 48-B was introduced by the Land Acquisition(Tamil Nadu Amendment Act, 1996-Act 16/1997), keeping in mind that there

is no provision in the Central Act for re-conveyance of the land to the original owner after taking possession of the land if the land is not required by the Government. Section 48-B of the Tamil Nadu Amendment Act reads as follows:

> Transfer of land to original owner in certain cases: Where the Government are satisfied that the land vest In the Government under this Act is not required for the purpose for which it was acquired, or for any other public, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to in sub-section (1-A) and (2) of Section 23, if any, paid under this Act"

23. The inserted provision contemplates that in case the Government are satisfied that the land vest in the Government is not required for the purpose for which it was acquired or for any other public, they may transfer such land to the original owner who is willing to repay the amount paid to him for the acquisition of such land inclusive of the amount referred to in sub-section(1-A) and (2) of Section 23, if any, paid under the Act. When once the land vest in Government under Section 16-B, it is obligated to consider the request of the original owner who is willing to repay the amount for transfer of the land to such original owner.

24. The next question that arises for our consideration is as to whether the original owner has any vested right?

25. Right to property is not a fundamental right after the insertion of Article 300-A by the Constitution (Forty Fourth Amendment) Act, 1978, but such right is still a constitutional right. In terms of Article 300-A, " No person shall be deprived of his property save by authority of law". The provisions of the Principal Act provide such authority to the State and Central Government, as the case may be, to acquire the land for public purpose. As the acquisition of land deprives the constitutional rights of the land owners, stringent provisions are made for acquisition and payment of reasonable compensation. The right to acquire land by the Government is sovereign power of eminent domain as held by the Supreme Court in JILUBHAI NANBHAI KHACHAR VS STATE OF GUJARAT (1995 Supp.(1) SCC 596)

26.. In CHANDRAGAUDA RAMGONDA PATIL VS STATE OF MAHARASHTRA (1996(6) SCC 405) the Supreme Court has observed as follows:

> " We do not think that this Court would be justified in making direction for restitution of the land to the erstwhile owners when the land was taken way back and vested in the Municipality free from all encumbrances. We are not concerned with the validity of the notification in either of the Writ Petitions. It is axiomatic that the land acquired for a public purpose would be utilized for any other public purpose, though use of it was intended for the original public purpose. It is not intended that any land which remained un-

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utilized, should be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on the date of the notification. Under these circumstances, the High Court was well justified in refusing to grant relief in both the Writ Petitions"

27. In S.P.SUBRAMANIA CHETTY VS K.S.R.T.C (A.I.R.1997 SC 2076), the Supreme Court observed that the Court cannot compel the Government to withdraw the acquisition proceedings or to restore the possession to the owners of the land.

28. In C. PADMA VS DEPUTY SECRETARY TO THE GOVERNMENT OF TAMIL NADU (1997 (2) SCC 627), the Supreme Court observed that when the acquired land having vested in the State and the compensation having been paid to the claimant, the claimant was not entitled to restitution of possession on the ground that either original public purpose had ceased to be in operation or the land could not be used for other purpose.

29. In NORTHERN INDIAN GLASS INDUSTRIES VS JASWANT SINGH (2003(1) SCC 335), the Supreme Court has held as follows:

"If the land was not used for the purpose for which it was acquired, it was open to the State Government to take action but that did not confer any right on the respondents to ask for restitution of the land"

30. In GOVERNMENT OF A.P. AND ANOTHER VS SYED AKBAR (2005(1) SCC 558) the Supreme Court has held as follows:

When the land is acquired under the Land Acquisition Act which is vested in the State Government free from all encumbrances, the Question of re-conveying the land as claimed by the respondent could not be accepted in view of the clear position of law stated in the decisions of this Court aforementioned"

31. In fact, the Supreme has observed that the Government is also entitled to dispose of the unutilized land, of course, by public auction and necessarily need not be re-conveyed to the erstwhile owner in the judgment reported in STATE OF KERALA VS.M. BHASKARAN PILLAI (1997(5) SCC 432) The relevant portion reads as follows:

" In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of Section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is

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needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public action can be better utilized for the public purpose envisaged in the directive principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value"

32. As the very object of the Amendment Act introducing Section 48-B indicates that for insertion of the said provision enabling the State Government to re-convey the unutilised lands to the erstwhile owners subject to the conditions enumerated in that Section. This provision was inserted keeping in mind that there is no provision in the Central Act enabling the Government to re-convey the unutilised land. Of course, the Supreme Court in all the above judgments had considered the power of the Government to withdraw the land acquisition proceedings under Section 48 of the Central Act. That Section contemplates that the Government shall be at liberty to withdraw the acquisition proceedings of any land of which possession has not been taken. While considering the scope of Section 48, the Supreme Court has held that the Government is empowered to withdraw the acquisition but even then, in the absence of any vested right on the erstwhile owners, the Government cannot be compelled to withdraw the acquisition proceedings and re-convey the land. Equally, the Government also cannot unilaterally withdraw the acquisition without the consent of the erstwhile owners.

33. As the provision of Section 48B is unique and is contemplated only by Tamil Nadu Amendment Act, the purport of that Section must be considered with reference to the object and reasons. By the above provision, the erstwhile owners are entitled to make request to the Government for re-conveyance of the land, of course, subject to their willingness to repay the amount paid to them under the Act for acquisition of land inclusive of the amount referred to in Sub-section (1-A) and (2) of Section 23, if any, paid under this Act. By the provision of Section 48-B an element of right to repossess the land by way of re-conveyance is conferred on the owners, of course, subject to the compliance of Section 48-B. Issue of re-conveyance under Section 48-B, came up for consideration before a Division Bench of this Court in the judgment reported in SOUTHERN RAILWAYS ETC., VS S. PALANIAPPAN AND OTHERS (2005(2) LW 325). In the said judgment, the Division Bench while considering the issue as to the willingness of the land owners and the right of the Government to accept the willingness, has held in para 33,34 and 35 as follows:

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33. Mr. R. Krishnamoorthy, learned senior counsel for the respondents-land owners placed reliance on the decision of a learned single Judge in M. Manimegalai vs State of Tamil Nadu,2004 Writ L.R.789 (vide paragraph-10) wherein it was observed: "Section 48-B has been introduced with a view to protect the interest of the persons from whom the land has been acquired but not utilised. Such provision is a benevolent provision. Even though it is not specifically indicated in Section 48-B regarding the right of such a person to file application, it is obvious that such a person has to indicate his willingness to get the land back subject to repayment of the compensation"

34. We respectfully do not agree with the learned single Judge that Section 48-B has been introduced only to protect the interest of the persons from whom the the land has been acquired. In our opinion, Section 48-B can also protect the interest of the State Government which wants to re-convey the land which it had acquired, but in such a case the State Government must get the consent of the erstwhile land owner before it can re-convey the land to him under Section 48-B. The State Government cannot act unilaterally in this connection as already held above.

35. For the reasons given above, we are of the opinion that the impugned order dated 3.12.2003 does not fall within the ambit of Section 48-B as it is a unilateral act and hence, it has to be declared as invalid, because by a mere executive order, unsupported by statute, land which stands vested in the State Government under Section 16 of the Land Acquisition Act cannot be unilaterally re-conveyed by the State Government to the erstwhile land owners.

34. It is well settled principle of law that ordinarily the Court should give a plain and literal meaning while interpreting the statute. In SWEDISH MATCH AB VS SECURITIES AND EXCHANGE BOARD, INDIA (AIR 2004 SC 429), the Supreme Court has held that where the words of a statute are absolutely clear and unambiguous, recourse cannot be resorted to the principles of interpretation other than the literal rule. In PRAKASH NATH KHANNA VS CIT (2004(9) SCC 686, the Supreme Court has held that the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it

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has said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency especially when a literal reading of produces an intelligible result.

35. In order to apply the provisions of Section 48-B of the Tamil Nadu Amendment Act, 1996, firstly, the land must vest with the Government under the Act in Revenue Department, and secondly, in the opinion of the State Government, such land is not required for any other public purpose and thirdly, the said land can be re-conveyed to the original owner who is willing to repay the amount that was paid to him under the Act for the acquisition of such land inclusive of the amount referred to in Sub-section (1-A) and (2) of Section 23, if any, paid under the Act. The power of the Government to transfer such land to the original owner is only discretionary. Where the lands are forfeited by the Government from the Housing Board, it can be utilised by the Government for any other public purpose. In the event, the Government is of the opinion that the lands are not required for any other public purpose, then it must consider re-conveyance of the land under Section 48-B. Only in the event, the Government is of the view that the lands cannot be re-conveyed, it may resort to dispose the land by public auction. However, the exercise of the power under Section 48-B cannot be mechanical and whenever the discretion to take a decision is conferred on the authority by a statute, concept of fairness inherent in the guarantee of equality under Article 14 of the Constitution of India must be ensured. Exercise of such discretion could be tested on fairness and reasonableness. This is more so when such authority is bound to determine the questions affecting the right to property of individual. The decision must be supported by reasons with materials and necessarily be an informed one. In this context, the exercise of such discretionary power as to whether the land should be re-conveyed to the original owner or should it be sold by public auction, should not be arbitrary and unreasonable and fairness must prevail in such decision. Though the land owners cannot have any vested or absolute right to seek for automatic re-conveyance of the land, they have an element of right for consideration of their claim for re-conveyance in terms of Section 48-B.

36. . In view of the above discussions, we hold that the Government in exercise of the power under Section 16-B of the Act can forfeit the land from the Tamil Nadu Housing Board as penalty and on such forfeiture, the land shall vest in the Government in Revenue Department free from all encumbrances. Once such vesting takes place, the Government shall consider the request, if any, received from the land owners expressing their willingness for re-conveyance and may accept or reject. Such exercise of power is discretionary and the owners have no right to seek for automatic re-conveyance of land. The Tamil Nadu Housing Board has no power under Section 72 of the Act to dispose of unutilized land and such power shall only vest with the Government under Section 16-B of the Land Acquisition Act.

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37. Coming to the facts in issue in all these Writ Appeals, though award was passed in respect of 662.96 acres of land,

possession was taken only in respect of 105.61 acres of land and handed over to the Board, out of which, only an extent of 21.47 acres of land alone was utilised. The acquisition proceedings were completed in the year 1991 and the award was passed in the year 1994. Possession was taken and compensation was also paid to the owners. It is the specific case of the appellants that large number of buildings have come up in the land notified, and the implementation of the scheme is not really possible. By the impugned orders, the respondent-State Government has rejected the request of the erstwhile land owners for re-conveyance on the ground that possession of the land was taken and handed over to the Housing Board and the compensation was also paid to the erstwhile land owners and that the lands are still required for Housing Scheme. Except the above, we do not find any consideration of the individual grievance of the appellants.

38. For rejecting the request of the land owners,the Government has given two reasons viz.,(1) the land owners have been awarded compensation and possession of the land has been given to the Housing Board and (2) the land is still required for Housing scheme. Insofar as the first reason, we are of the opinion that the same cannot be held good in view of the specific provisions of Section 48-B enabling the land owners to make the application for re-conveyance. Mere fact that they have received compensation does not prevent them from making a request to the Government invoking Section 48-B of the Act for re-conveyance of the unutilised lands. Insofar as the second reason, it must be kept in mind that though the proposal was made by the Housing Board to the Government for acquiring an extent of 1997.02 acres of patta land, ultimately, the Government could pass award only in respect of 662.96 acres and even out of the said extent of the land, only an extent of 105.61 acres was taken possession and handed over to the Housing Board. But the Board could utilise only an extent of 21.47 acres of land for Housing Scheme. In view of the above undisputed facts, we are of the considered view that the Government have not applied their mind to the above aspects while they came to the conclusion that the land is still required for Housing Scheme.

39. In our opinion, merely because possession is taken and the lands are handed over to the Housing Board, the power of the State Government to forfeit the land under section 16-B of the Act, is not curtailed. The said power is independent and exclusive. In the event, the lands are unutilised by the Board for quite long number of years, the State Government has the power to forfeit the lands by way of penalty. Of course, the fact that Section 17-A was repealed was not brought to the notice of the learned single Judge and consequently, the learned single Judge has held that there is vesting of land in Housing Board under Section 17-A. In view of Section 162 of TNHB Act, 1961 the City Improvement Trust Act, 1950 was repealed and consequently, Section 17-A was also repealed. In the circumstances, there cannot be any vesting of the land on the Housing Board under Section 17-A as well as the Government under Section 16 of the Central Act simultaneously.

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40. On a challenge to the above impugned orders, the learned Single Judge has dismissed the Writ Petitions mainly on the ground

that the land handed over to the Housing Board shall vest in the Housing Board under Section 17-A of the Act and there cannot be a further vesting in the State Government under Section 16-B. In our opinion, the said finding is unsustainable in view of the fact that Section 17-A was repealed by the provisions of Section 162 of the Tamil Nadu Housing Board Act which was enacted in the year 1964. As on today, Section 17-A is not in the Text Book and the only provision holding the field is Section 16-B, empowering the State Government for forfeiture of the unutilised lands from the Housing Board by way of penalty.

41. For the foregoing reasons, all the Writ Appeals are allowed and the impugned orders are set aside and the matters are remitted to the State Government for reconsideration of the applications made by the appellants for re-conveyance under Section 48-B of the Act on merits in accordance with law and in the light of the findings rendered by us in this judgment. Such exercise shall be completed within a period of three months from the date of receipt of copy of this judgment. No costs. Consequently, W.P.M.P.Nos.1002 and 1003 of 2006 are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

vbs

To

1. The Secretary
   State of Tamil Nadu
   Housing and Urban Development Department,
   Fort St. George,
   Chennai 600 009

2. The Managing Director
   Tamil Nadu Housing Board
   No.331, Anna Salai, Nandanam
   Chennai-35.

3. The Special Tahsildar Land Acquisition
   Housing Scheme Unit-II
   Coimbatore-18.

6 ccs to Mr.R.N. Amarnath, Advocate, Sr. 34911 to 34916
1 cc to Mr.K. Chelladurai, Advocate, Sr. 24588

in W.A.No.443 of 2006
etc., batch

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